

Appl. No. 10/553,363
Amdt. dated September 10, 2007
Reply to Office Action of June 1, 2007

REMARKS/ARGUMENT

This amendment responds to the Office Action of December 14, 2006.

Claims 1-20 are pending in the application. This response amends claims 1, 7, 12, 13, 16, and 18 and cancels claims 2 through 6, 8 through 11, 19 and 20.

Claims 1-17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. Specifically, according to the Examiner:

" ... [T]he specification, while being enabling for combating / controlling fungi growth in crops using a composition comprising 2,6-dichloro-N- {[3-chloro-5-(trifluoromethyl)-2-pyridinyl]methyl}benzamide (1a) and chlorothanil (see specification pages 10-14) does not reasonably provide enablement for curing or preventing fungi growth in crops using said composition. The specification is also enabling for composition comprising 2,6-dichloro-N- {[3-chloro-5-(trifluoromethyl)-2-pyridinyl]methyl}benzamide (1a) and chlorothanil since unexpected results are provided on pages 10-14 of the specification. However the specification is not enabling for all other compounds of instant formula I being combined with chlorothanil. Other compounds of formula I in the claims are structurally and functionally different from compound 1a."

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It is noted that U.S. Patent No. 6,503,933, cited by the Examiner, and EP-A-1056723, an equivalent thereof cited in the present application in paragraph [0002] and thereby incorporated therein by reference, disclose a large number of 2-pyridylmethylamine derivatives, including some, if not all, of those of the present invention and disclose their utility as fungicides. Claims 5 through 9 of that patent are directed to a method of combating phytopathogenic fungi and there are a number of examples demonstrating such utility. Accordingly, it is known in the art that such 2-pyridylmethylamine derivatives are efficacious for such combat.

The claims have been amended to claim the combination of 2, 6-dichloro-N-{[3-chloro-5-(trifluoromethyl)-2-pyridinyl] methyl} benzamide and chlorothalonil which interact synergistically to effect this utility. The Examiner found this combination both supported by the specification and allowable due to the unexpected results shown by the Applicants. Further, the terminology "preventively or curatively" no longer appears in the claims, which now read on "combating and controlling phytopathogenic fungi."

Accordingly, it is requested that the rejection of claims 1-17 under 35 U.S.C. 112, first paragraph, be withdrawn.

Claims 16 through 19 have been rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter for which the applicant regards as the invention. These claims have been amended or canceled.

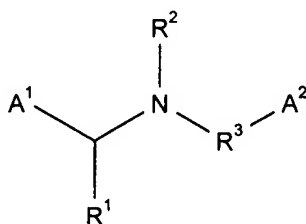
Claims 1-18 have been rejected under 35 U.S.C. 103(a) as being unpatentable over Moloney et al. (U.S. Patent No. 6,503,933) and The Agrochemicals Handbook, A0090 / Aug 91.

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Moloney et al. disclose compounds of formula (I) and salts thereof as phytopathogenic fungicides wherein A¹ is substituted 2-pyridyl; A² is optionally substituted phenyl; R³ is -(C=O)-, -SO₂- or -(C=S)-; R¹ is hydrogen, optionally substituted alkyl or acyl; and R² is hydrogen or optionally substituted alkyl:



It is understood that the Examiner has cited The Agrochemicals Handbook to show that the compound chlorothalonil is a known fungicide. This matter has been acknowledged by the present inventors in published paragraph [0015] of the present application.

It is understood to be the Examiner's position that the Applicants have provided unexpected results for the invention comprising the compound of the combination of 2, 6-dichloro-N-{[3-chloro-5- (trifluoromethyl)-2- pyridinyl] methyl} benzamide and chlorothalonil. The claims have been amended to reflect this combination and it is therefore requested that the rejection of claims 1-18 under 35 U.S.C. 103(a) as being unpatentable over Moloney et al. and The Agrochemicals Handbook be withdrawn.

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In view of the foregoing, it is submitted that this application is in condition for allowance and an early Office Action to that end is earnestly solicited.

Respectfully submitted,



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